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No. 73-1142

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1973

BANK OF COMMERCE OF LAREDO, PETITIONER

v.

CITY NATIONAL BANK OF LAREDO, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT COMPTROLLER OF THE CURRENCY IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner seeks review of a decision of the United States Court of Appeals for the Fifth Circuit (Pet. App. A 1-20) affirming the decision of the district court (Pet. App. C 23-33) which upheld the granting of a new national bank charter by the Comptroller of the Currency of the United States to the City Bank of Laredo.

In its comprehensive and well-reasoned opinion, upon which we rely, the court of appeals held (Pet. App. A 13-15):

> Here that voluminous record surely indicated the determinative reason for the final agency action: a finding that the new bank was soundly organized,

> capitalized and managed and constituted a sound economic venture in light of the banking needs and services already available in the surrounding community. When findings of fact, rendered contemporaneously with the concomitant administrative decision, are subsequently available, a reviewing court may not require the agency officials who participated in that decision to give testimony explaining their action unless there has been a strong showing of bad faith or improper behavior. * * *
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> The appellant's assertions of misconduct and collusion are wholly refuted by the record.

The court of appeals' decision is in accord with the principles set forth in this Court's opinion in *Camp* v. *Pitts*, 411 U.S. 138. There is no occasion for further review.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

MARCH 1974.